



## Touro Law Review

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Volume 15 | Number 2

Article 15

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1999

### Critical Race Theory-The Last Voyage

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#### Recommended Citation

Subotnik, Dan (1999) "Critical Race Theory-The Last Voyage," *Touro Law Review*. Vol. 15 : No. 2 , Article 15.

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Dan Subotnik\*

*Until [whites] understand that conversations about race are ones in which they engage to learn rather than to teach (which is their historical and customary position), real and meaningful conversations cannot happen.*

Chris Iijima<sup>1</sup>

*I do not want any more American progress—white-over black, to white over black, to white over black. I am not going to fall for anymore up-from-slavery stories. I want to shatter the dream. I want to play with the fragments of the narrative. . . . Perhaps we will, together, escape the Promised Land.*

Anthony Farley <sup>2</sup>

“One of the ironies of the creative process,” writes Pulitzer Prize-winning author Ernest Becker, “is that . . . usually, in

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Note: This response to the foregoing Symposium articles went to press when page numbers for those articles were not yet available. As a result, page citations cannot be provided. Special effort has been made to insure that quotations are correct and contextually fair.

<sup>1</sup> Chris Iijima, *Race as Resistance: Racial Identity as More than Ancestral Heritage*, 15 TOURO L. REV. — (Winter 1999).

<sup>2</sup> Anthony Paul Farley, *Thirteen Stories*, 15 TOURO L. REV. — (Winter 1999).

order to turn out a piece of work the author has to exaggerate the emphasis of it, to oppose it forcefully in a competitive way to other versions of the truth; and he gets carried away by his own exaggeration, as his distinctive image is built on it.”<sup>3</sup> If Becker is right--and there is evidence that he is,<sup>4</sup> especially in the race area<sup>5</sup>--and if we do not wish to be misled, or worse, manipulated, we should be tempted to respond to academic work with deep distrust, or even derision. But Becker, perhaps fearful of undermining the market for his own work, refuses to let readers off the hook so easily. “[E]ach honest thinker who is basically an empiricist” he insists, “has to have some truth in his position, no matter how extremely he has formulated it. The [readers’] problem is to find the truth.”<sup>6</sup>

So, in Becker’s terms, it would seem that, no matter how tendentious their work, writers included in this Symposium are entitled to the consideration that is due to writers generally. But are they so entitled? I suggest they are not; for missing from the work of all but one of them is evidence that the writer is “basically an empiricist.”<sup>7</sup> The foregoing does not, of course, necessarily mean that the articles herein should be ignored<sup>8</sup>; it means only that they are not entitled to Becker’s presumption.

What consideration is owed these authors? Let us start with Chris Iijima who announces that, notwithstanding their pretensions, whites are simply not qualified to teach in the race area. They are qualified to learn, he concedes, but this they have

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<sup>3</sup> ERNEST BECKER, *THE DENIAL OF DEATH* xi (1973).

<sup>4</sup> See, e.g., Dan Subotnik, “*Sue Me, Sue Me, What Can You Do Me? I Love You: A Disquisition on Love, Sex And Talk*,” 47 FLA. L. REV. 311, 343-48 (1995).

<sup>5</sup> See, e.g., Dan Subotnik, *What’s Wrong with Critical Race Theory? Reopening the Case for Middle-Class Values*, CORNELL J.L. & PUB. POL’Y. (Spring 1998) (forthcoming).

<sup>6</sup> See, e.g., Becker *supra* note 3, at xi.

<sup>7</sup> McQueary Smith stands as an exception in this respect. The selection and presentation of her data, however, make problematic the determination of whether or not her argument is supported by the data.

<sup>8</sup> Reginald Robinson’s brave piece in this issue, for example, is a valuable contribution to the literature.

no inclination to do.<sup>9</sup> Iijima is, accordingly, not wasting his time with them, but is directing his message to minorities. Should whites, in turn, ignore Iijima? Such a response might be satisfying; it is not, however, productive. So the question becomes: Can white people properly respond to an article which is explicitly not directed at them? Since Iijima has published his article in a general law review, I suggest the answer is yes.

Iijima charges that Asian Americans have always suffered from "subordination." "I cannot remember when I was not the enemy, he announces." "Shortly after World War II," Iijima explains, "when I was born, the 'Japs' still were the enemy." Then it "was the 'Red (communist) 'Chinks' and the North Korean 'gooks, and then the Southeast Asian 'gooks.' At one point, Americans were afraid that the Japanese would take over the United States, and now it is the 'Chinks' campaign contributions that pose a national threat."

What sense can we make of this reported victimization? The early years after World War II cannot have been easy for Japanese Americans. It took a great deal of time for Americans to purge themselves of the notion that the Japanese were still the enemy and, by extension, that Japanese Americans were suspect. But except for that period of time, Iijima's conclusions are questionable; for he offers no evidence that he was treated as an enemy during our conflicts with the Chinese, North Koreans, and Vietnamese. Indeed, such treatment would have been surprising since the Japanese, if not our allies in these wars, were by no means our adversaries. Of course, if Iijima or his family did happen to identify with one or another enemy, then it would be perfectly reasonable for some Americans to view them with suspicion.<sup>10</sup>

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<sup>9</sup> See opening epigraph.

<sup>10</sup> Even more farfetched is Iijima's attempt to forge an Asian American identity on the crucible of recent American oppression of Asians and Asian Americans. If some Chinese, Koreans and Vietnamese were enemies during the last sixty years, others were allies. If Americans could make distinctions on the battlefield, they could presumably make them at home. If not, Iijima should provide details. If Iijima is saying that battlefield allegiances notwithstanding, these were racist wars that never would have been begun had

The rest of Iijima's article is no less overwrought. Drawing on a newspaper summary of a single study, Iijima concludes that "fears that immigration is producing economic hardship for the United States are unfounded." This is certainly the implicit (if not explicit) position of mainline critical race theory which holds that immigration policy is dominated by racial, not economic, considerations.<sup>11</sup> But Iijima is surely patronizing his readers here; there is much evidence--cultural as well as economic--on the other side.<sup>12</sup> Whether or not we are persuaded by that counter-evidence, Americans must surely ask some important questions before just throwing the door open to immigrants. Among them, Does a majority culture have a right—or even an obligation—to protect itself from dilution or even destruction?<sup>13</sup>

The legitimacy of efforts to preserve a culture is not an academic question. "We are entering a brave new world of majority people of color," as Iijima reminds us. With each year we are becoming an increasingly diverse society. If America is what it is, as Patricia Williams argues, because of a coerced

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our opponents not been Asian, he should look to Japanese depredations in China, Korea and the Philippines, which until recently were too fresh in the minds of nationals in those countries to allow for the development of the kind of Pan-Asian or Asian American sensibility that Iijima now promotes. If Iijima is really suggesting that America visits its savage power only on the Asian continent, he should consider what happened in Dresden 55 years ago. And, finally, without evidence on the matter, it is hard to see how the John Huang campaign contribution episode could lead to a feeling that "I [Chris Iijima] was the enemy."

<sup>11</sup> See, e.g., PATRICIA WILLIAMS, *THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE* 68 (1995).

<sup>12</sup> See, e.g., PETER BRIMELOW, *ALIEN NATION* (1995); ROY BECK, *THE CASE AGAINST IMMIGRATION* (1996); GEORGIE ANNE GEYER, *AMERICANS NO MORE* (1996).

<sup>13</sup> A reviewer asks whether there is a "majority culture" in America or just a majority white racial group. I say the former and cite black critic Albert Murray for authority. "[R]egardless of all the hysterical protestations that would have it otherwise," he writes, American culture is "incontestably mulatto." Indeed, he continues, "for all their traditional antagonisms and obvious differences, the so-called black and the so-called white people in the United States resemble nobody else in the world so much as they resemble each other" (quoted in STANLEY CROUCH, *ALWAYS IN PURSUIT* 141 (1998)).

assimilation “at the high cost of burying forever languages, customs and cultures,”<sup>14</sup> is the majority morally required to accept that change happens whatever the consequences? Surely one of the functions of a culture is to perpetuate itself. Take a not altogether implausible future scenario. Suppose we can expect the English language to come into jeopardy as the American *lingua franca* because of a large influx of Spanish-speaking immigrants. Would we be acting irresponsibly by just asking whether the door to Latin American immigration should be closed for a while until new immigrants were successfully absorbed (assimilated?)<sup>15</sup> Those tempted to say yes out of hand might want to read Jean Raspail’s *Camp of the Saints*,<sup>16</sup> a 1973 novel that has provoked strong reactions.<sup>17</sup> A productive discussion on cultural and immigration issues might, for once, ensue.

Iijima calls for “resistance” to white racism.<sup>18</sup> To what, in particular, does he advocate resistance? It is not entirely clear but apparently it is, first, to the notion that “there is a ‘pure’ African-American or Latino race that is ‘unmixed’ by other races, and that individuals are free to choose a racial designation unaffected by how they are perceived in the larger society.” The problem with this argument is that it is *multiracial* members of society who claim the right to distinguish themselves from both white and black cultures, and they do so presumably in the hope

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<sup>14</sup> See WILLIAMS, *supra* note 11, at 68.

<sup>15</sup> See Linda Bosniak, “Nativism” the Concept, in IMMIGRANTS OUT! 287 (Juan Perea, ed. 1997): “[I]t is by no means politically *verbotten* in this country to promote the ideal of a unified national culture.”

<sup>16</sup> JEAN RASPAIL, *CAMP OF THE SAINTS* (Norman R. Shapiro trans., Eng. ed. 1975) (1973). The story, set in the near future, is about the great public debate that takes place when word gets out that a million desperate third-worlders are sailing in a giant convoy towards southern France.

<sup>17</sup> The Atlantic Monthly has called the book “one of the most disturbing novels of the late twentieth century.” See paperback cover. Linda Chavez, on the other hand, called it “a paranoid, racist fantasy.” See Raymond Tatalovich, *Official English as Nativist Backlash*, in IMMIGRANTS OUT!, *supra* note 15, at 88.

<sup>18</sup> “Race is Resistance” is the primary title of his work.

that their choice will be respected by all concerned.<sup>19</sup> Would Iijima deprive them of the freedom to do so? If he would, he should say so explicitly. Resistance is advocated, second, to the “continued racial subordination by an increasingly [paranoid] white minority [which] will require simultaneously sophisticated mechanisms of racial stratification and control, and the maintenance of stereotypes to monitor and suppress dissatisfaction by those subordinated.” Since no evidence of such subordination of Asian American or other minorities is adduced, we are left with only rhetoric.

Why isn’t the oppression of Asian Americans evident to all? It is, according to Iijima, occluded by the hateful “model minority” myth. Iijima’s purpose is now clear—to get special consideration for Asian Americans by tying their experience to critical race theory and, through that, ultimately, to the African American experience. These links, however, need to be examined. First, must we accept Iijima’s declaration of oppression? Asian American essayist Eric Liu can help us evaluate this and related claims for *The Salience of Race*.<sup>20</sup> “In today’s coded conversations about race,” he writes, “rumors of *inherent* Asian superiority feed rumors of *inherent* black inferiority.”<sup>21</sup> This,” he adds, “helps explain why some American Asian activists go to great lengths to remind people how troubled their community actually is, how riddled with shortcomings and social pathology. They treat praise as damnation,” he concludes, “commendation as calumny.”<sup>22</sup>

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<sup>19</sup> See Leslie Espinoza, *Latino/a Identity and Multi-Identity*, in THE LATINO CONDITION 17 (Richard Delgado and Jean Stefancic eds. 1998). “The politics of race in America . . . is the erasure of the richness of my Mexican/Jewish/Irish mix, and a whitewashing of the colorful complexity of meaning in each of my ethnic roots.” *Id.* at 18. See also Berta Hernandez-Truyol, *Building Bridges*, in THE LATINO CONDITION, *supra* this note, at 24. “As multiple-layered selves we are denied part of our personhood when we have to deny a part of who we are; our experience simply cannot be sanitized to fit a mold in the creation of which we were not considered.” *Id.*

<sup>20</sup> ERIC LIU, THE ACCIDENTAL ASIAN (1998). “The Salience of Race” is, of course, the title of the Symposium in question.

<sup>21</sup> *Id.* at 158.

<sup>22</sup> *Id.*

Second, even if the community is oppressed, asking for special treatment is not the only African American way. “[T]here is also an American Negro tradition which teaches one to . . . master and contain pain,” writes Ralph Ellison. “It is a tradition,” he adds, “which abhors as obscene any trading on one’s anguish for gain or sympathy; which springs not from a desire to deny the harshness of existence but from a desire to deal with it as men at their best have always done.”<sup>23</sup>

Robert Ward<sup>24</sup> does provide the basis for his argument—a screenplay. Viewers of *Fargo* will not likely forget the scene in which the unmistakably pregnant Chief and Londegaard verbally spar in the latter’s office. Ward feels Londegaard’s pain: “It was clear that he did not feel free to leave[; his] presence. . . at that moment is as voluntary as a tiger caged in a local zoo.” The test of whether there has been a search or seizure, he reminds us, is precisely whether a suspect felt free to leave. Since “[i]t defies logic to characterize such meetings as being consensual encounters which may subsequently lead to the voluntary relinquishing or waiving of important constitutional rights,” Ward insists, Londegaard should have received Fourth Amendment protection. To ensure that future suspects are not abused, Ward proposes that police explicitly inform them of their right to refuse to cooperate.

Ward is surely right that Londegaard is under pressure not to leave his office. His conduct, therefore, does not have the same degree of voluntariness as, say, that of a voter in an enclosed booth who casts his ballot for A rather than B. But are most decisions made free from pressure of one sort or another? And how legally relevant is this pressure? Relationships are seldom equal; one party, whether a boss, a lover, or a client, will at different times be in a superior bargaining position. But the

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<sup>23</sup> Quoted in SHELBY STEELE, *A DREAM DEFERRED*, opening epigraph (1998).

<sup>24</sup> Robert V. Ward Jr., *Consensual Searches, The Fairy Tale That Became A Nightmare: Fargo Lessons Concerning Police Initiated Encounters*, 15 *TOURO L. REV.*— (Winter 1999).



contract standard for unenforceability, which Ward accepts as one (if not the only) test, is not inequality but unconscionability.

So, before we can agree with Ward, we have to ask about the nature of the implicit threat to Londegard. Is it that the big-bellied Chief will shoot him? Arrest him? Camp out in his office until he cracks? Hardly. Will she start rummaging through his papers to find something incriminating? Not very likely in the absence of a search warrant. Moreover, Londegard is, as Ward concedes, "by all accounts, a person of privilege." As such he can be presumed to know his rights. So why is he cooperating with the Chief? Surely, it is that if he, an ostensibly law-abiding executive, does not cooperate, the Chief will become suspicious, get a search warrant, and thereby make far more trouble for him. Better to head the Chief off at the pass.

Ward's analysis of the policeman's power is seriously strained in other ways as well. He cites the famous Milgram experiment for the proposition that we are specially vulnerable to certified authority figures, that they can induce us to abandon carefully developed goals we set for ourselves.<sup>25</sup> Because of their power over us, Ward argues, a request by a policeman could well lead to an ill-considered abandonment of Fourth Amendment rights. But in the Milgram experiment the primary injury was suffered by third parties; the study does not support the notion that authority figures overwhelm our drive for *self*-preservation. Ward next cites a *NYPD Blue* episode in which a policeman slaps a suspect. Given our pop-culture dominated world, that blow represents, for Ward, the archetypal threat for anyone not cooperating with the police. Perhaps so. But our pop culture highlights no less dramatically the rights of the accused—among them, to be represented by an attorney and to have his bodily integrity protected. Even the most ignorant and innocent, I

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<sup>25</sup> See STANLEY MILGRAM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW (1974). See Adrian Barrio, *Rethinking Schneckloth v. Bustamante: Incorporating Obedience Theory into the Supreme Court's Conception of Voluntary Consent*, 1997 U. ILL. L. REV. 215, 233-38 (1997) for a nice summary.

suggest, know of suspects who have had their rights splendidly vindicated.

Perhaps Ward's concern is with the Rodney Kings of the world, not with the Londegards. But do minorities cooperate with police at a different rate than do whites?<sup>26</sup> Ward does not say. He does suggest that because police have a long history of subordinating minorities, they have to take "greater care" than they have in the past that encounters with minorities are not oppressive. No dispute here. But what does Ward mean by this? Is he saying that a different standard be explicitly applied to white and minority detainees? It is not clear. He does recommend use of a more subjective standard to determine whether a person felt free to leave. But can a subjective standard work? Or is Ward really advocating a "reasonable black person" standard for black people? If the latter, he should say so. We could then assess the cost to race relations in America of explicitly adopting such a rule.

The real problem with Ward's work is that Ward is not the social scientist he purports to be. We need consider only his assertion that in the Fourth Amendment area the Supreme "Court is too quick to set aside the individual's rights for the good of society." Yet he fails to make the most elementary inquiry about what that good might involve. For in spite of our progress in reducing violent crime over the last few years, America probably remains the most violent country in the western world.<sup>27</sup> The chaos and mayhem in our streets and homes, however, do not enter into Ward's calculus. Nor do the psychological and social implications of his proposal that the police warn the populace about talking to them because the "time has long passed. . . when the police officer could be viewed as your friend." Maybe, on balance, these factors should not control the shape of search and

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<sup>26</sup> Ironically, in some ways, America's unhappy racial history probably makes it easier for minorities to avoid cooperating with the police than for whites. Take the case of Londegard. Because of his obvious middle-class status, Londegard would have raised far more suspicion by refusing to cooperate than would have someone of a lower social class.

<sup>27</sup> See FRANKLIN ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM* 8, 10 (1997).

seizure law. But, if this is the case, if integration of police forces in urban America is not effecting the desired change--we should be made to understand why.<sup>28</sup> As matters stand, Ward is writing about a universe far removed from that inhabited by most Americans.

As is *Dink Stover*.<sup>29</sup> We can only celebrate Professor Stover's graduation from the welfare rolls. But what are the larger implications of his achievement? We need to listen to Professor Stover as he condemns the new welfare law. "In *my* case, welfare was not a trap." "I don't think any of this government aid particularly hurt *me*" (emphasis in these cases added). "I doubt that [the successful experience of] *my* circle of friends is unique." Are these the words of a cautious, objective, and rigorous scholar? Or of one trapped in solipsism? A large literature points to the devastating consequences of giveaway (i.e. pre-workfare) welfare for many recipients.<sup>30</sup> Stover's essay

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<sup>28</sup> If Ward does not explain, we may make a classic mistake usefully described by Lloyd Cohen: "Since the transactions costs of law are generally not explicitly modeled, discussion of law reform is often carried out with the implicit assumption that that costs are negligible and may be ignored." Lloyd R. Cohen, *Sexual Harassment and the Law*, SOCIETY, May/June 1991, at 11.

<sup>29</sup> Dink Stover, *A "Welfare Prince" Looks at Welfare Reform*, 15 TOURO L. REV. - (Winter 1999). Italics are used because Stover does not write under his own name.

<sup>30</sup> See, e.g., MICHAEL TANNER, *THE END OF WELFARE* (1996); ROBERT SOLOW, *WORK AND WELFARE* (1998); GARETH DAVIES, *FROM OPPORTUNITY TO ENTITLEMENT* (1996); LAWRENCE MEAD, *BEYOND ENTITLEMENT* (1986); *GAINING GROUND, NEW APPROACHES TO POVERTY AND DEPENDENCY* (Michael Cromartie, ed. 1985). See also STANLEY CROUCH, *THE ALL-AMERICAN SKIN GAME* 30-31 (1995): "Welfare laws should be changed so that irresponsible behavior is discouraged by laying the burden of support on the teenage parents." *Id.* If, Crouch continues, the parent were held "responsible for 45% of the support of his or her child [and was] incarcerated in a work-study program from which the monies would go to the child's support, the problem would diminish quite rapidly. *Id.* *Those who think that absurd,*" Crouch concludes, "*have no understanding of human nature*" (emphasis added). *Id.* Does Stover believe that readers are not at least familiar with the existence of this literature, let alone the details?

offers no reference to, much less engagement with, the literature detailing this evidence.<sup>31</sup>

Columnist Marilyn Vos Savant, whom Stover cites, wants to do something at least for some of the people who are hurting. Seeing a large market for household workers, she recommends that Congress adopt a tax credit for employers who hire unskilled domestic help. One would think that people who, in Stover's words, "lack basic work skills," might benefit from such a policy. For Stover, however, either such people do not count for much or training is an all-or-nothing proposition—or both. "In my more intemperate moments," he announces from behind the cover of his pseudonymity, "it seems to me that this bitch thinks that rather than teaching law school people like me should be cleaning her toilets." What kind of policy debate can take place in the face of such potent protoscatological imagery?

Regina Austin's cause is even less empirically grounded than Stover's.<sup>32</sup> Austin faults the Wisconsin Supreme Court for not

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<sup>31</sup> A critic chides me for failing to understand that "Stover is not professing to conduct a scientific inquiry" and that if I do not like the use of narrative, I should "criticize it as a style" and not "pretend Stover is playing by your rules." On the contrary, as will appear shortly, I am a great believer in the narrative style. I do not, however, see storytelling and data production as mutually exclusive undertakings.

<sup>32</sup> Regina Austin, *Of False Teeth and Biting Critiques: Jones v. Fisher In Context*, 15 *TOURO L. REV.* – (Winter 1999). A brief recitation of the facts seems necessary for those who have not read her piece. In 1967 Aleta Jones borrowed \$200 from the nursing home where she worked in order to purchase new dentures. Shortly after obtaining them she quit. Upon hearing the news, her employer, Fisher, tried to talk her into staying. When the effort failed, Fisher demanded the \$200. Jones offered to pay it back in monthly installments of \$20, but Fisher balked, insisting that payment be made immediately or that the dentures be left as security. When Jones ran from the room, Fisher's husband pinned Jones down and ripped out the dentures. Jones was not severely injured by this abhorrent act, but did suffer some pain and humiliation. She immediately went to the police who got the dentures back for her within the hour. In the subsequent suit, a jury awarded Jones compensatory and punitive damages, respectively, of \$1,000 and \$5,000.

fitting the Jones claim into a larger context, *i.e.*, that of women domestics and their employers. Crediting Judith Rollins<sup>33</sup> for opening her eyes to the abuses in “the relationships between black domestics and their white employers,” Austin makes a series of stunning charges. To avoid misinterpretation, I quote the major ones. 1) “There was no suggestion that [Jones’] suit related to any systemic wrong that should have triggered the common law’s concern with general deterrence.” But was any evidence introduced on the subject of violence in employer/domestic-servant relationships, in general, or in this particular relationship? Is it relevant that Aleta Jones did not work in the Fishers’ home. Or does the simple fact of violence between a low-paid employee and an employer automatically place it in the suspect class and require punishment as such? Austin does not say. 2) “The personal kindness and generosity the Fishers showed Mrs. Jones were at least as instrumental and manipulative as they may have been selfless and philanthropic.” Knowing that women attach special significance to “personal feelings and the quality of their relationships,” Austin explains, the Fishers “pulled the emotional strings by attempting to persuade Mrs. Jones to return to work.” If manipulation of this nature were criminalized, would we not all be in jail? As for Austin’s cynical Marxist view of the implications of imbalances in social status, we have to wonder: does the holder of the William A. Schwader Chair at the University of Pennsylvania Law School have no genuinely warm feelings for her secretaries, and perhaps even her students?

There is more. 3) “The Fishers’ use of force and violence should not have been viewed as a response to acts of provocation and betrayal on the part of Mrs. Jones, but to the frustration of the Fishers’ sense of mastery and domination over her person.” Would Austin, one wants to know, feel a little betrayed if her secretary had borrowed \$1,000 from her for a used car and quit immediately thereafter? 4) “Instead of looking at the loan as

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Upon appeal the Wisconsin Supreme Court cut the award to \$500 and \$2,000, in part because no medical evidence of injury was introduced.

<sup>33</sup> JUDITH ROLLINS, *BETWEEN WOMEN: DOMESTICS AND THEIR EMPLOYERS* (1985).

charity. . . the court might have considered it as being in lieu of a raise.” So, how could the Fishers possibly be upset with her for taking a hike? By Austin’s reasoning, the money was really Jones’; she could have just taken it.<sup>34</sup> 5) “The failure to seek medical attention and the consequent absence of medical testimony to substantiate her claim of distress may also be attributed to her limited income.” Perhaps so, but should the court have simply presumed injury thereby eliminating the need for proof? 6) “If the Fishers were truly concerned about her, they would have been happy that she had obtained a better job.” If she had truly loved Eddie Fisher, by this logic, Debbie Reynolds would have exulted at being dumped for Elizabeth Taylor.

Finally, what about the contemporary implications of Aleta Jones’ 1967 case? Today, Austin tells us, we might read the opinion as presenting “another example of gender and possibly race bias [in the courts through undervaluation] of pain and suffering experienced by female and/or minority plaintiffs,” even though “domestic workers are less likely to be native-born blacks [and] the Civil Rights movement made it harder to for white employers to treat black female domestics as social inferiors.” Since “[t]here is little curiosity about the lives of subordinate black people,” Austin ends with the unobjectionable conclusion that more study of the way minority people live is needed. There is a perspective, however, that Austin does not offer, but makes relevant, if not essential, to the interpretation of the Jones story and, most important, to the role played in it by the Wisconsin Supreme Court. Put another way, Austin ignores what for our own purposes is the most salient feature of the Jones case, *i.e.*, that “race has no salience.” For, you see, Aleta Jones was (is?) white.<sup>35</sup>

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<sup>34</sup> What impact, one wonders, will declaring Open Season on the Fishers of the world have on employment prospects for the Joneses.

<sup>35</sup> This information was supplied over the telephone on Friday December 4, 1998 by Larry Haukom, whose firm represented Jones.

Unlike Austin, Derrick Bell, a much-celebrated parent of critical race theory, offers no basis whatever for his conclusions and thus no immediate opportunity for engagement. The African American law teaching community, he announces, is, like the early settlement at Roanoke Island, "A Colony at Risk."<sup>36</sup> On what ostensible evidence? "[T]he numbers of those who are to replace us are much smaller than we had hoped." But this lament relates to disappointment, not to disappearance, and, furthermore, can be evaluated only if Bell tells us what expectations were, which he never does. To support his apocalyptic vision of the salience of race, Bell needs to answer a narrow question: Are there fewer minority academics these days than, say, ten years ago? Bell does not say. The data do, however. One hundred and seventy-eight more African Americans worked full time in law teaching in 1998 than in 1988. The proportion of such African Americans has risen during the period from 4.8% to 7.8%.<sup>37</sup> We may not have reached Nirvana; but we are surely still far from Oblivion.

Bell next cynically complains about those committed to hiring "the best": "One can only marvel that many of those voicing this commitment can do so with straight faces, without any seeming understanding of just how unimpressive they are." But in an environment that is increasingly competitive, is Bell's observation not beside the point? Each generation has to gain control of and process more information than the prior one. The real issue thus would seem to be, at least in terms of Bell's concerns, whether whites are being hired with lesser skills than blacks. But, again, Bell does not say. He does not hesitate, however, to end his essay with the end-of-the-world vision that the only "reminder of our endeavors [may be] the academic equivalent of the 'CROATOAN' carved on one tree."<sup>38</sup>

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<sup>36</sup> See Derrick Bell, *A Colony at Risk*, 15 TOURO L. REV. – (Winter 1999).

<sup>37</sup> Data provided by Rick Morgan, Data Specialist for the ABA on December 9, 1998

<sup>38</sup> For those not familiar with the story, these letters C\_R\_O\_A\_T\_O\_A\_N, carved on a tree, was the only remnant of a vanished white colony in America at the end of the 16<sup>th</sup> century.

Of all the authors in this critical race theory compilation, none paints as unmitigatingly desperate a portrait of contemporary racial realities as Anthony Farley.<sup>39</sup> For him our government does not seek containment of a crazed and murderous dictator in Iraq, but only “an erotic encounter with brown and black bodies burned to bits half a world away,” which but replays an earlier picture of “miles of blackened bodies, shattered limbs, melted windshields, stinking burning tires, smashed skulls and spattered flesh, a child cut in two. . . .” He sees no effort to limit the nonstop evil that addiction works on this nation and, above all, on its minority communities. Every day, rather, “our hallucinogenic war on drugs destroys the Third World lives it claims to be saving and the unlucky Thirteenth Amendment’s mootness is written on black flesh and steel chains.” “Eichmann,” in short, “is not dead.”

Presumably on a theory that these stories are too abstract to be useful, Farley reminds us of J.P. Ivy, “a Negro burned at the stake at Rocky Ford, Miss. Sunday Afternoon,” as if the event took place last weekend instead of 75 years ago. “I watched an angry mob chain him to an iron stake. I watched them pile wood around his helpless body. I watched them pour gasoline on this wood. And I watched three men set this wood on fire.” Farley then tells us about Ota Benga, the Bushman, who “was put by the management on exhibition [in a cage] with monkeys as companions . . . in the Bronx Park.” This incident, which took place almost a century ago, is ostensibly no less relevant today.

“What do the souls of black folks look like,” Farley challenges his readers, “after you have been digesting them for 500 years [and] “vomit[ing them] back onto their auction blocks?” The question, he suggests, is important. For it shows Americans “what they have been masticating for the last half-millennium.” And herein, Farley emphasizes, lies the strength of critical race

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<sup>39</sup> See *supra* note 2.



theory: it, like “vomit, cannot be ignored; [for o]ne is lured by objects of loathing [such as] “a piece of filth, waste or dung.”<sup>40</sup>

Horror stories and alarmist prophecies are not peripheral for Farley, for the other writers under review, or for critical race theorists (CRATs) generally; they are central.<sup>41</sup> And it is not farfetched to lay much of the responsibility for this development at Bell's doorstep. For *A Colony at Risk* is not his most important nightmare. That honor goes to *The Space Traders*, which has become not only a full-blown classic,<sup>42</sup> but also a paradigm for CRATs. *Space Traders* is a tale of the arrival of visitors to the United States from another planet. After a preliminary evaluation of American civilization, they realize that they do not have time to complete their mission of studying human beings. The objective can only be accomplished by bringing Americans back home with them for further study. But how and who? The aliens are not strong enough to force the issue; they will need the cooperation of the American government and people. Quickly learning of both America's contempt for minorities and its greed, they decide to exploit that knowledge. They offer enough gold to bail out our federal, state and local governments in exchange for all African Americans. A great debate on the subject ensues, but in the end, Bell makes clear, blacks are marched off towards the spaceship in chains. The circle is now complete; “black people leave the New World as their forebears had arrived.”<sup>43</sup>

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<sup>40</sup> Are scatological references and scatology itself somehow becoming fashionable in legal academia? It seems so. See WILLIAM IAN MILLER, *THE ANATOMY OF DISGUST* (1997).

<sup>41</sup> I have coined the term CRATs for critical race theorists to distinguish them from Race CRITs, their more common label, which seems awkward. See Subotnik, *supra* note 5. For the centrality of CRT fantasies, See DERRICK BELL, *AND WE ARE NOT SAVED* (1987) and *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992), which consists almost entirely of horror stories; see also WILLIAMS, *supra* note 11, at 105-06 and 218-25 analyzed in Dan Subotnik, *supra* note 5.

<sup>42</sup> See *FACES*, *supra* note 41, at 158-94.

<sup>43</sup> *Id.* at 194.

For Richard Delgado, the Great Struggle will take a different form, but it ends the same way—with the elimination of black people from America. In his 1996 book *The Coming Race War? and Other Apocalyptic Tales of America After Affirmative Action and Welfare*, he asks us to imagine why affirmative action is under attack and why, more particularly, the Supreme Court has rejected voting districts drawn along racial lines.<sup>44</sup> It cannot be, he announces, because the majority sincerely believes that racialism is destructive to civil society. No, suggests Delgado's interlocutor, Kowalski: "Caucasians will cease being a majority about midway in the next century."<sup>45</sup> At that point in the ordinary course of events they would lose power. So what is really happening? "[T]hey're gearing up for a fight."<sup>46</sup> Kowalski explains: "It's one of the oldest tricks in the world—provoke your enemy until he responds, then slap him down decisively."<sup>47</sup>

Delgado's other interlocutor, Rodrigo, quickly catches on. "People of color rarely support guns," he observes. By contrast, "[r]ight wing militias are virtually all-white, so assault weapons create firepower among the white minority . . . . Right-wing fundamentalists," he continues, "have always had a morbid fascination with apocalypse. Formerly, they defined it in terms of H-bombs and nuclear Armageddon . . . ." "Now," he concludes, it is "race war."<sup>48</sup>

How can we understand these terrifying scenes of the degradation and Final Destruction of minorities? Two answers suggest themselves immediately. First, these imaginings bespeak a *nostalgie de la boue*—literally, a lust for the mud (in this case that of racial limitation)—born of the profound guilt of those who

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<sup>44</sup> RICHARD DELGADO, *THE COMING RACE WAR? AND OTHER APOCALYPTIC TALES OF AMERICA AFTER AFFIRMATIVE ACTION AND WELFARE* 119 (1996).

<sup>45</sup> *Id.* at 120.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 122. Delgado wants to make sure that we read him literally. By "war" he does not mean culture war but "armed force." *Id.* at 125.

have escaped it.<sup>49</sup> Second, as will be clear shortly, a claim of debasement lays the foundation for, and thus allows the pleasure of, humiliating others.

In short, critical race theory (CRT) was not designed as a discipline for ascetic scholars, content to produce incremental truth through suppression of personal preference and painstaking weighing of evidence. Rather, CRT is a discipline whose power derives from the personal catharsis it markets. "I grew up thinking that 'Sapphire' was merely a character on Amos 'n' Andy," writes Regina Austin, "a figment of the white man's racist, sexist comic imagination. . . . All she does is complain. Why doesn't that woman shut up?"<sup>50</sup> Now, Austin acknowledges, she sees that Sapphire has her uses. "[T]he time has come for us to get truly hysterical, to take on the role of 'Professional Sapphires' in a forthright way. . . ."<sup>51</sup>

Nietzsche understood the rhetorical advantage of placing one's emotions in the service of one's intellectual activity: "Men believe in the truth of all that is *seen* to be strongly believed . . . ."<sup>52</sup> If end-of-the-world critical race stories are believed they will, in turn, engender a sense of panic and shame. Two things then happen. First, the preempting message, being dramatic and urgent, goes to the top of the pile. Second, the terrain for opposing messages gets preempted. It is for these reasons, I have suggested elsewhere, that law review editors have privileged hundreds of undisciplined, silly, destructive and, above all, self-

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<sup>49</sup> Stanley Crouch has identified the condition of "the discomfort with success so powerful that those suffering from the sickness must pretend that they are still victims in order to dodge the feeling of guilt for not being down there with the rest of the tribe." See Crouch, *supra* note 30, at 69.

<sup>50</sup> See Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 539-40 (1989).

<sup>51</sup> *Id.* at 542. Similarly, Patricia Williams exhorts minority academics to action not by holding out social problems waiting to be solved but, rather, release from traditional scholarly restraint. "[B]oundary crossing, from safe circle into wilderness . . . is the willingness to spoil a good party and break an encompassing circle . . . . The transition is dizzyingly intense, a reminder of what it is to be alive." See WILLIAMS, *supra* note 11, at 129.

<sup>52</sup> Quoted in John Grass, "A Nice Pleasant Youth" N.Y. REV. OF BOOKS, December 17, 1998, at 12.

destructive articles,<sup>53</sup> while perhaps discouraging, if not rejecting, articles that might subject CRT to normal academic standards.<sup>54</sup>

We are all, I suggest, paying a high price for this indulgence. For whites, the price is an abiding cynicism about anything CRATs say. Among other things, the suspicion arises that CRATs are wrapping themselves up in the CRT flag primarily for personal gain. Consider Chris Iijima, who has transformed himself from an individual academic into an embodiment of a nation, indeed a coalition of nations. Today, a school that does not tenure him will be rejecting the culture of Japan, China, Korea, Vietnam, etc., a colossal affront, if not an act of war, in this multicultural world.<sup>55</sup> (In much the same way Farley makes himself an embodiment of all African American history.) Pressures created by such a posture are far less likely to arouse trust within the majority community than distrust.

But even more important than the impact of these stories on whites, I suggest, is their impact on minorities. “[W]hile slavery

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<sup>53</sup> See Subotnik, *supra* note 5. In the several paragraphs that follow I will be summarizing thoughts I first expressed elsewhere. The reader’s indulgence is asked.

<sup>54</sup> There are probably 300 CRT theory law review articles in print existence now, to say nothing of a few score books on the subject. Many of those law review articles are even more problematic than the ones evaluated herein. By contrast, there are only a small handful of articles that engage CRT from the outside. See Subotnik, *supra* note 5. This latter article, which was rejected by no fewer 100 law reviews, attempts to explain the awesome preemptive power of CRT.

<sup>55</sup> I do not, of course, claim to know Iijima’s motivation. What I do know is that other CRATs have consciously made the connection with tenure. See, e.g., Stephanie Grillo, *Tenure and Minority Women Law Professors* 31 U.S.F. L. REV. 747, 754 (1997) (published posthumously). “Maybe we should hire all minority women with tenure. While this is not exactly a likely development, it does make a fair amount of sense—the experience of minority women faculty is so different from that of other faculty that it is hard for other faculty to make realistic evaluations.” *Id.* Whatever Iijima’s motivation, he must concede the legitimacy of the question since he himself recognizes—and indeed complains about—those Asian Americans and others whose “middle-class proclamations of racial pride are aimed more to advance [themselves] to positions of even higher economic status, than to attack the system.” *Id.* Stanley Crouch calls the use of race for career advancement purposes the “victim trump” game. See Crouch, *supra* note 30, at 69.

is over," writes Derrick Bell, "a racist society continues to exert dominion over black men and their maleness in ways more subtle but hardly less castrating than during slavery."<sup>56</sup> Can black males remain unscathed from this kind of self-mutilating rhetoric?<sup>57</sup> From Anthony Farley's self-excrementalizing imagery?<sup>58</sup> Or, from his vision of the place black people call home? "Ours is an evil city," he tells us, "an evil city on a hill, an evil city that manufactures plague. It is," he concludes, "a city of death." One has to wonder: How many times can people hear their doom pronounced before retreating from the world into their plastic bubbles?<sup>59</sup>

If I am right, some change in scholarship is urgently needed. But what? To answer that question we have to stop for a moment and ask how have we gotten to the point where CRATs are so out of control. Shelby Steele offers an explanation: for historical reasons that are quite understandable, whites and blacks scale back their dialogue to avoid feelings of vulnerability. For whites, that vulnerability is the charge that they are racist; for blacks it is the charge that they are inferior. So a bargain is struck, one result of which is that blacks are not challenged in their claims of victimization.<sup>60</sup> Any remaining interest on the part of whites--or minorities, for that matter-- to open up debate is squelched by complaints, like Farley's, that CRT "is still wedded to the notion of dialogue" (as if there were an alternative).

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<sup>56</sup> DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (2005).

<sup>57</sup> Not according to Columbia University professor Daryl Scott. See SCOTT, *CONTEMPT & PITY* 180 (1997): "[D]amage imagery has [always] served the cause of hegemonic political ideology." *Id.*

<sup>58</sup> See *supra* this article.

<sup>59</sup> Here is the basis for the argument, so unsettling to Farley, that CRT is a disease. See Subotnik, *supra* note 5 for other evidence of the destructiveness and self-destructiveness of CRT.

<sup>60</sup> See Shelby Steele, *The Race Not Run*, NEW REPUBLIC, Oct. 7, 1996, at 26. Crouch condemns the basis of this bargain, the "patronizing idea that Negroes are somehow so incapable of existing as adults in the contemporary world that they should always be handled like extremely fragile children, who must be fed the myths that make them 'feel good about themselves.'" See CROUCH, *supra* note 30, at 57.

Meeting little opposition, CRT has spread its racialism everywhere. Steele's solution to the problem? "For America to survive its struggle with racial shame, it will have to stop cringing before it. This only makes for another kind of indecency."<sup>61</sup>

One need not be a black conservative to conclude that this veiled dance has to come to an end. Randall Kennedy has put it starkly:

[U]nless inhibited every person and group will tend towards beliefs and practices that are self-aggrandizing. This is true [not only] of those who inherit a dominant status, [b]ut [also] of those who inherit subordinate status. . . . Surely one of the most striking features of human dynamics is the alacrity with which those who have been oppressed will oppress whomever they can once the opportunity presents itself. . . . [Thus] it is not premature to worry about the possibility that blacks or other historically subordinated groups will abuse power to the detriment of others.<sup>62</sup>

Some CRATs seem to agree. "If engagement is the first step in healing," writes Harlon Dalton, "then the second is pure unadulterated struggle. . . . We will never achieve racial healing

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<sup>61</sup> STEELE, *supra* note 23, at 165 (1998). See Richard Posner, *Beyond All Reason*, NEW REPUBLIC, Oct. 13, 1997, at 42 (book review): "White scholars have largely ignored [CRT]. This has been no favor to it. Criticism is the oxygen of a scholarly movement." *Id.* A movie of recent vintage examines the price sometimes paid when that engagement is lacking. Dr. Willis is called in to diagnose his patient's deteriorating mental condition. "Who is to say what is normal in a king?" he asks. "Deferred to, agreed with, acquiesced to, who can flourish on such a daily diet of compliance?" He proceeds to announce his prescription for a cure. "To be curbed, stood up to—in a word, thwarted—exercises the character, elasticizes the spirit, makes [one] more pliant." See THE MADNESS OF KING GEORGE (1994).

<sup>62</sup> Randall Kennedy, *My Race Problem—and Ours*, ATLANTIC, May 1997, at 65.

if we do not confront one another, take risks. . . say all the things that we are not supposed to say in mixed company.”<sup>63</sup>

But what will counter the powerful narrative elements in CRT? Certainly not more and better data. Critic Stanley Crouch tells us how judgments on race issues are made these days: “[W]e will accept [any] shaky system of thought if it makes use of the linguistic pressure points and pleasure centers that allow us to experience [our] sadomasochistic rituals . . . in place of hard study and responsible precision.”<sup>64</sup> And how have we come to the point where we pretend that our self-flagellation “has something to do with the blue steel *facts* of unfairness in our country.” (Emphasis added) It is, according to Crouch, because “[o]ur desperate good will” combined with “a politics of blame” push us to conclude that “all evil can be traced to the devil’s address, which is, in some way, the address of the privileged and the successful.”<sup>65</sup>

If data will not change the paradigm, stories will have to be used. But who will dare to announce a competitively emotive eschatological vision, one that ends not with doomsday but with peace, healing and redemption, in short, with Rapture? Not minority scholars. CRATs have made such action treasonous.<sup>66</sup>

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<sup>63</sup> HARLON DALTON, *RACIAL HEALING* 4, 97 (1995). See also PATRICIA WILLIAMS, *supra* note 11, at 40: “One of the subtlest challenges we face. . . is how to relegitimize the national discussion of racial, ethnic and gender tensions so that we can get past the Catch -22 in which merely talking about it is considered an act of war, in which not talking about it is complete capitulation to the status quo. . . .” *Id.* at 40. How are we to understand these recent calls for honest race talk? Larry Garfinkle suggests a possible answer. The President of New England Wire and Cable is talking to him in his office. Out of the blue, the former asks, “Can we speak frankly?” “I don’t like people who say, ‘Can We speak frankly,’” responds Garfinkle. “Means they’re bullshitting me the rest of the time.” See JERRY STERNER, *OTHER PEOPLE’S MONEY* 14 (1989).

<sup>64</sup> See CROUCH, *supra* note 30, at 34.

<sup>65</sup> *Id.*

<sup>66</sup> See Deborah Post, *Reflections on Identity, Diversity and Morality*, 6 BERKELEY WOMEN’S L. J. 136, 163 (1990-91). “Two things are forbidden: 1) The public criticism of those who have chosen to confront the majority [or 2)] conduct which . . . belittles members of the group. [Each of these] is an act of

So it will have to be done by figures drawn from the majority. White men, however, are at a disadvantage in this regard. Alex Johnson explains why. “[W]hite men do not employ the narrative mode,” he explains “because to do so would result in their talking about dominance and that currently is not acceptable.”<sup>67</sup> Opponents of CRT might be tempted to give up all efforts to engage in real debate; Richard Delgado, however, rejects that response, inviting the participation of all commentators on race in his well-known *Legal Storytelling: Storytelling for Oppositionists and Others: A Plea for Narrative*.<sup>68</sup> (*emphasis added*) So those of us with opposing visions must proceed as best we can.

The following events take place only a short time before the Space Traders’ descent onto the American continent. Our story, however, is about departure, not arrival. Pulled and pushed in all directions by the centrifugal forces of race and culture, Americans came to coalesce in one conviction—the need for a giant venture into distant space. The technology was mostly there, after all, for the most exciting mission of exploration in our history. Of greater significance was the consensus that

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betrayal tantamount to treason.” *Id.* Crouch describes the consequences of this creed. “[S]o many of us are afraid of being called self-hating or neoconservative that we function too often like espionage operatives who cannot be expected to tell the truth publicly for fear of being castigated into unemployment or ostracized.” *See* CROUCH, *supra* note 63, at 53. What is needed, Crouch suggests, is a black Balzac who would cause reviewers to “quiver with rage.” *Id.*

<sup>67</sup> *See* Alex Johnson Jr., *The New Voice of Color*, 100 YALE L.J. 2007, 2047 n.170 (1993).

<sup>68</sup> Richard Delgado, *Legal Storytelling*. . . , 87 MICH. L. REV. 2411 (1989). “Stories. . . chronicles, narratives,” Delgado explains, “are powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings [in our] legal and political discourse. . . . They can show what we believe is ridiculous, self-serving or cruel.” *Id.* at 2413, 2415. Eleanor Brown, an “aspiring critical race theorist” is even more explicit about the need for a broad range of stories: “Critical race theory needs a formulation that takes account of White people’s realities.” Eleanor Brown, Note, *The Tower of Babel: Bridging the Divide between Critical Race Theory and “Mainstream” Civil Rights Scholarship*, 105 YALE L.J. 508, 541, 545 (1995).



nothing could better highlight our commonalities, and thus unify us, than a mission to find and engage an alien civilization.

Planning the effort was not easy. What five astronauts would represent America in a voyage of unprecedented scope? Those with the best science backgrounds for attending to the physical needs of the astronauts? Philosophers and linguistics specialists who could best communicate with the aliens? Those with the emotional intelligence to withstand the enormous stresses of the voyage? Some combination of the above? And how to make the selection? Employment status, it was argued, reflected group power which disadvantaged minorities and women. Tests were no more reliable; they reflected the cultural bias of white male testmakers, who codified standards for performance based on the skills of the white majority, thereby ensuring that others would fail. No substitute tests were advanced. The only practical alternative offered was a lottery.

As though these issues were not difficult enough, another was presented: should race be an independent factor? If so, how and to what extent? Some groups insisted that minority representation was essential; and not only because of historical exclusion from the space program. Nurtured in a different environment, aliens would surely be *different*, they pointed out; who could understand the implications of such difference better than minorities?

After much deliberation one black man and four other men were selected. Once again, however, objections were raised. The black selectee was not, it was argued, sufficiently "authentic." An astronaut selected for the mission would be a national hero; it would not serve either whites or minorities to have a black man who was too wedded to majority values. With the final deadline for selection approaching, and although no CRAT had ever come close to making the cut, the Committee concluded that the *authenticity problem* could be solved only by appointment of a CRAT. After more intense study, one was found, a male. No woman was willing to endure a stay in space with any of the men in question.

One technological hurdle remained: feeding the crew for what would be by far the longest human journey ever taken. Hydroponics could help to some extent, but not enough.

Fortunately, a solution was soon found in the Converter. This ingenious device could take human waste products, cleanse and deodorize them, and allow them to be recirculated. The Converter would take advantage of the most obvious yet often suppressed biological fact, that far from being devoid of nutrients, excretory products are loaded with them. Indeed, as biologists have long known, the large intestine actually creates nutrients, so that what comes out of humankind is in many ways richer than what goes in. It is this Law of Conservation of Nutrients that has allowed human waste material to be used and reused as fertilizer since the beginning of recorded history.

But there was the psychological dimension: how to tell mature adults that what they learned as infants now had to be unlearned. This problem, too, was quickly solved. For the men in question were not only true adventurers, they also came to understand that the Converter offered a unique opportunity for the kind of bonding that would be required if the men were to survive in close quarters for the length of the trip. The Converter would work communally, not individually. The astronauts would become Mud Brothers.<sup>69</sup>

A few months before the launch, when everything seemed in place, the CRAT suddenly pulled out of the eating plan as proposed. This symbol of equality, he explained, was inappropriate in the wake of slavery, Jim Crow, lynchings, and the disproportionate contemporary distribution of goods. Such a symbol might be helpful in the long run, he conceded, but in the short run it would obscure the need for whites to expiate their sins. What was needed, he said, was a public righting of the historical (im)balance of degradation, and his proposal presented the best opportunity for doing so. Under this plan the others would depend on a supply of nutrients to which all five would contribute; he himself, however, would draw on his own recycled product.

When this idea was first sounded, even the astronauts--chosen in no small part for their unflappability--were stunned. For CRATs, however, this "innovative" proposal was the best chance

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<sup>69</sup> See DAN SABBATH AND MANDELL HALL, *END PRODUCT* 217-29 (1977).

for a just and lasting racial peace. Facing more delay, if not nasty protest, and seeing a kind of logic in the proposal, mission control capitulated. With no choice in the matter and their patriotism called into question, so did the astronauts.

The pre-launch conflict made it hard to conceive of a successful mission. But the mission has, by all measures, succeeded beyond wildest hopes. A state of harmony exists on board that could only have been dreamt of at the close of the twentieth century. And a New Era of Good Feeling based on "real and meaningful conversations"<sup>70</sup> has now spread over the entire nation as Americans have come to see that if racially diverse astronauts can live together in peace and harmony for ten years in the cramped quarters of a spaceship, there is no end to what racial glories we can achieve in this vast land of ours.

There were, to be sure, some moments on the way to the New Era when realization of the worst seemed imminent. First, some serious technical mistakes were made that might have led to disaster. Perhaps more significant, far from bringing the peace it advertised, the innovative plan served, instead, to do precisely the contrary. The CRAT soon announced that because his predecessors had slept in wretched conditions, he should have the choice of sleeping position. This time the astronauts kept their misgivings to themselves. Emboldened, he next declared the right to select communal music precisely half the time, although there were four others and only one of him, because the others liked the same music and his tastes were *different*. Regardless of how they felt about this arrangement, he insisted, it would be good for them because they needed to learn to appreciate his culture. Once again, the others quickly backed down.

The differences of opinion that rapidly multiplied need not be recapitulated here. Suffice it to say that the last of these was recorded a half-year later, when one day, with no immediate provocation, an astronaut raised the music issue. The CRAT huffily responded that he would no longer discuss these matters with his colleagues, that "conversations about race are ones in which they engage to learn rather than to teach." (sic) It was not

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<sup>70</sup> See opening epigraph.

long after this exchange that headquarters got the fateful eight-word message that marks the end of the critical race experiment and the beginning of the New Era: "There is some shit I will not eat."<sup>71</sup>

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<sup>71</sup> e. e. cummings may have originated this phrase. See cummings, *i sing of Olaf big and small* (1931). The response to the CRAT may explain Professor X's sharp reaction to Iijima's comment at the Conference about the purpose of inter-racial dialogue. See opening epigraph and Farley, *supra* this article.

